



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: October 18, 2000 REPORT NO. 00-211

ATTENTION: Honorable Mayor and City Council
Docket of October 23, 2000

SUBJECT: San Diego Municipal Code Changes related to Entertainment
Establishments, After Hours and Promoters

REFERENCE: Manager's Report No. 00-53, dated March 3, 2000
Manager's Report No. 00-197, dated September 29, 2000

SUMMARY

Issues – 1) Should the City of San Diego amend the Municipal Code sections regulating Entertainment Establishments, After Hours and Promoters? 2) Should the proposed regulatory fees be established, in order to recover costs?

Manager's Recommendation – Approve the changes to the Municipal Code and approve the regulatory fees.

Other Recommendations – None.

Fiscal Impact – The following fees are based on the cost of administration, implementation, and enforcement for the industries affected by this proposal. The proposed fees are based on time dedicated to the various industries. For some entertainment venues the proposed fees, which have not increased in over ten years, reflect an increase over current fees. For other entertainment venues, particularly those that currently hold multiple permits, the proposed fees would result in a decrease in fees. The proposed fees are different for large venues, small venues, venues with alcohol, and venues without alcohol. The estimated cost of enforcement is \$381,655 and the estimated revenue is \$381,655 for 100% cost recovery. If the City Council adopts the proposed cost recovery fees the City will annually recover the following:

- On-going Entertainment Establishments with alcohol or patron dancing or both alcohol and patron dancing:
\$675 annually - for large venues (50 or more persons)
\$338 annually – for small venues (49 persons or less)
- On-going Entertainment Establishments no-alcohol and no patron dancing:
\$184 annually – for large venues (50 or more persons)
\$126 annually – for small venues (49 persons or less)
- Single event Entertainment venues:
\$379 per event – for large venues (50 or more persons)
\$189 per event – for small venues (49 persons or less)
- Promoters:
\$34 annually
- After Hours (2:00 a.m. - 6:00 a.m.) Entertainment:
\$1,570 annually - on-going
\$408 per event - single event

BACKGROUND

In November, 1992, a Vice and Licensing Task Force was formed as a joint venture between the City Attorney's Office and the San Diego Police Department. The Task Force studied and made recommendations regarding the following police-regulated businesses: massage and holistic health; dance, cabaret, after-hours, and promoters; peepshows; nude entertainment; and escorts. The Task Force recommended amending Chapter III, Article 3 of the San Diego Municipal Code. The recommendations were previously presented to the Public Safety and Neighborhood Services Committee in 1995 and 1996. At that time the Committee accepted the recommendations and directed City staff to develop new ordinances and amend existing ordinances. The ordinance project continued over the years but met with a number of unforeseen delays along the way.

In early 1999, the ordinance project was revitalized by the Police Department. Research was done on each ordinance to ensure the recommended changes were appropriate based on current industry standards. Vice investigators conducted inspections and gathered information about changes that occurred in the industry since the original task force recommendations.

In doing its research, the Police Department found that there exists a need to continue regulation of the Cabaret industry (live entertainment with alcohol). There is also an urgent need to update the regulations governing Commercial Recreational Assemblages (generally, all ages, live entertainment, and no alcohol). Commercial Recreational Assemblages include: concerts, live performance theatres, carnivals, circuses, rodeos and similar establishments or enterprises. Commercial Recreational Assemblages were not studied by the original 1992 Vice and Licensing Task Force; however, many of the issues and problems with Commercial Recreational Assemblages are the same as those in dance and cabaret establishments.

For example, some Commercial Recreational Assemblages, primarily concert venues, "RAVE" parties, and entertainment venues located near residential neighborhoods are causing an increase

in complaints to the Police Department. The complaints received by the Police Department include: excessive noise from the amplified music; excessive noise from loud patrons outside the establishment; altercations; parking congestion; litter problems; increase in neighborhood traffic; crowds of patrons blocking the sidewalk outside the venue; sexual activity occurring in public; urination in public; unlawful drug sales and use; inebriation; minors consuming alcohol in the parking lots; curfew violations; and after hours entertainment activity. The current Commercial Recreational Assemblage ordinance also does not have limitations on the hours of operation. The current cabaret and dance ordinance requires an After Hours permit for all operations between 2:00 a.m. and 6:00 a.m..

The Police Department, in reviewing ordinances from other cities, discovered that some cities govern all non-adult live entertainment with one ordinance and one permitting system, rather than the multi-ordinance, multi-permit system currently in use in San Diego. On the basis of these findings and the Vice and Licensing Task Force findings, the Police Department suggested that an Entertainment Task Force be formed to explore similar options for the City of San Diego.

The Entertainment Task Force consists of industry members, industry attorneys, industry trade representatives, business owners, the California Department of Alcoholic Beverage Control, a representative from the City Attorney's office, and Police Department personnel. The Entertainment Task Force met several times over the last year. The meetings were facilitated by a member of the City's Organizational Effectiveness Program. The goal of the task force was to create an Entertainment Establishment Ordinance that eliminates outdated regulations and updates the necessary components of the current cabaret, dance, and Commercial Recreational Assemblage ordinances. The ordinance will also establish a single permit system with conditions tailored to the particular business activity.

The Police Department held publicly noticed meetings on March 29, 2000 and April 4, 2000 at the City Administration Building. The purpose of these meetings was to provide industry members and concerned citizens with copies of the draft ordinances and to provide an overview of the current and proposed ordinances. Additional meeting dates regarding the proposed Entertainment ordinance were published in the San Diego Union Tribune. The meetings were held at the San Diego Police Department Headquarters on August 15, 2000 and September 5, 2000. The Police Department met and has continued to meet individually with various industry representatives and business organizations to provide information and to obtain input regarding existing regulations and proposed changes.

On October 4, 2000, the Public Safety & Neighborhood Committee directed staff to continue meeting with concerned persons and industry representatives regarding the proposed ordinance. Publicly noticed meetings are scheduled for October 11, 2000 and October 17, 2000 and will be held at the Downtown Library.

DISCUSSION

ENTERTAINMENT ESTABLISHMENTS

The creation of a new division in the San Diego Municipal Code for entertainment establishments streamlines the application process by eliminating the need for multiple permits, e.g., Dance permits, Cabaret permits and Commercial Recreational Assemblage permits. It

simplifies the renewal process by eliminating quarterly permits. It updates regulations that have not kept pace with changes in local entertainment offerings and current conditions at entertainment venues in the City. The current ordinances were last amended over ten years ago. Some sections of the ordinances are more than thirty years old. The proposed ordinance creates a fair and flexible process for a variety of entertainment venues and allows conditions necessary for public safety to be placed on the permit.

Allowing the establishment of permit conditions will help ensure that the issuance of a permit will not interfere with the reasonable use and enjoyment of neighboring property and will not adversely affect the health, safety, and general welfare of the community. Where applicable, the Police Department intends to adopt the Alcoholic Beverage Control (ABC) conditions for those businesses that serve alcoholic beverages. However, in some cases there are no ABC conditions, or conditions were placed on the ABC license many years ago, necessitating additional analysis to establish appropriate requirements.

The placement of conditions on the permit will allow the Police Department to adequately regulate these businesses and provide flexibility in the process. For example, if there are no conditions for police permits but rather a set of requirements for every establishment regardless of size, as currently exists, then a small venue would be required to pay for security guards whether they are needed or not. Conditions are necessary to allow the appropriate permitting of various types of establishments or venues, e.g., single events, ongoing venues, venues with alcohol, venues without alcohol, venues in commercial areas, venues near residences, venues that cater to a young crowd, etc.

The consideration for conditions will be based on the impact to the surrounding community and institutions; noise; the likelihood of adverse effect on residential occupants; the possibility of increased traffic; the number of patrons; the conditions placed on similar establishments in the area; and the character of the neighborhood. The proposed ordinance would require that the conditions be based on specific and well articulated facts reasonably related to the public safety and welfare. This would include the protection of minors from alcohol, curfew violations and other criminal activity. Conditions may not be imposed unless the Chief of Police has considered the input of the permittee on the appropriateness of the conditions. The imposition of any particular condition would be appealable through the procedures set forth in San Diego Municipal Code sections 33.0501-33.0505.

The proposed Entertainment Establishment Ordinance has been improperly characterized as the “Coffee House Ordinance.” The ordinance is not designed to regulate coffee houses; however, it is aimed at entertainment venues. Such venues have been actively regulated for at least the last thirty years in the City under the Dance, Cabaret, and Commercial Recreational Assemblage ordinances. The proposed ordinance contains over thirteen exemptions, most of which do not exist under the current regulatory scheme. These exemptions are designed to provide regulatory relief to those venues that have no impact or minimal impact to the surrounding community. The vast majority of coffee houses will be exempt from regulation. Two exemptions in particular would apply to most coffee houses. These are the incidental or ambient music exemption, regardless of the occupancy load, and the small venue (forty-nine persons or less) exemption. The Police Department anticipates that the only “coffee houses” that will be regulated by this ordinance are those that function as a dance or concert-type venue. They should currently have police permits for such activity.

At the Public Safety & Neighborhood Services Committee meeting of October 4, 2000 staff was directed to research the exemption for forty-nine persons or less. This exemption is consistent with the California Uniform Fire Code (Section 216) occupancy classifications. The San Diego Fire Department uses the occupancy classification of a public assembly of fifty or more persons to require compliance with fire safety requirements and is opposed to increasing this exemption to seventy-five persons. They are concerned that dance or concert type venues, with a occupancy between fifty and seventy-five persons would avoid the required public assembly fire safety requirements for the building or structure. Currently, the Fire Department reviews and signs off on the police permit applications before they are submitted to the Police Department. This is done to ensure that the building or structure used for the dance or entertainment complies with the applicable Public Assembly requirements.

Additionally, at the October 4, 2000 meeting, staff was directed to research the feasibility of including an exemption for the Business Improvement Districts. The City Attorney is researching the possibility of including such language into the proposed ordinance.

The following are the highlights of the Entertainment Establishments Ordinance:

- Repeals the Municipal Code regulations governing Cabarets (Entertainment with alcohol), Dances and Commercial Recreational Assemblages and creates a new division regulating Entertainment Businesses.
- Eliminates outdated regulations such as no boisterous conduct, no vulgar language on the premises and no dancing partners.
- Makes the application process more efficient by eliminating the need for multiple permits and quarterly renewals.
- Adds the following thirteen exemptions from the permit requirements, most of which do not exist in the current dance, cabaret, and Commercial Recreational Assemblage ordinances:
 1. Youth organizations, schools and government agency sponsored dances and entertainment.
 2. Recorded music or entertainment.
 3. Private clubs.
 4. Private events such as weddings or banquets.
 5. Regularly established recreation parks.
 6. Charitable Organizations [IRS-501 (c)3] when all entertainment proceeds are for the benevolent purposes of such organizations.
 7. Performances by students at educational institutions.
 8. Motion picture theatres.
 9. Dance lessons.
 10. Book readings or signings and poetry recitations.
 11. Fundraisers for a political cause.
 12. Ambient or incidental music such as a piano player, guitarist, harpist, strolling violinist, mariachi band, acoustical band and no admission fee required.
 13. Small venues of forty-nine persons or less provided there is no alcohol, no dancing, no admission fee requirement, and entertainment ceases between 2:00 a.m. and 6:00 a.m.

- Simplifies enforcement by creating conditions on the permit that are the same or similar to Alcoholic Beverage Control (ABC) conditions. Tailoring conditions to each permit accommodates individual business needs by providing businesses flexibility in their entertainment while meeting the City's public safety needs. Conditions provide law enforcement with the ability to overcome problems that may be inherent to a specific community or business.

PROMOTERS

The creation of a new division regulating promoters is designed to hold promoters accountable for insuring a safe and legal event. Regulating promoters protects the public from illegal promotions. It also controls the potential for excessive noise and disorderly conduct by patrons who attend events sponsored by promoters. The following are the highlights of the proposed ordinance for promoters:

- Creates a new division to regulate promoters, making them accountable for any illegal activity that occurs at parties and single occasion events or venues.
- Requires the promoter to notify the Chief of Police a minimum of fifteen calendar days prior to any police regulated event they are promoting.
- Promoters of theatrical, athletic, educational, religious, civic, charitable, political, and other similar events are exempt from this new division. Promoters of circuses, rodeos, carnivals, and other similar events are also exempt.
- Promoters who are tax exempt under Internal Revenue sections 501 (c) 4, 501 (c) 5, and 501 (c) 6 are also exempt from the permit requirement.

AFTER HOURS

The creation of a new division regulating after hours activities would repeal the existing "after hours dance" and "after hours cabaret" regulations in Division 15 of the San Diego Municipal Code. "After hours" venues are entertainment venues operating between the hours of 2:00 a.m. and 6:00 a.m. After hours entertainment establishments are regulated because they present an environment with the potential for excessive noise and disorderly conduct by patrons. There are currently a total of five after hours permits in the City. Although there has been a limited number of after hours establishments, the City has experienced a disproportionate share of problems related to such venues. Three out of the five establishments have had administrative actions (suspension or revocation) taken against their police permits in the last two years. The greatest challenges for the community and the Police Department are the problems related to illegal drug use, noise, parking, and other associated nuisance factors at after hours entertainment establishments.

Under the current regulations, most dances and cabaret locations are unable to obtain an after hours permit because of the restriction on issuing such permits within 300 feet of a residence. It has been virtually impossible for most late night entertainment venues in the City's urban mixed use districts such as the "Gaslamp Quarter" to obtain after hours permits because of the current restriction. The proposed ordinance for after hours activities would allow a waiver of the minimum distance from households if the neighbors have input. The applicant must obtain and

provide written evidence that the households within 300 feet are aware of the application for the after hours permit and have no objection to it. The Chief of Police may still issue the waiver over the objection of a nearby resident if the objection is found to be unreasonable. The proposed ordinance would also provide police permit stipulations through the use of conditions to address adequate security, days and hours of operation, age of patrons (curfew restrictions and Alcohol Beverage Control requirements), noise control, and other conditions related to public safety and welfare.

The following are the highlights of the proposed After Hours Ordinance:

- Repeals the Municipal Code regulations governing after hours cabarets and after hours dances and creates a new division regulating after hours entertainment.
- Modifies application requirements to allow a waiver of the 300 feet minimum distance from households if requirements are met.
- Allows conditions to be imposed related to after hours activities reasonably related to ensuring public safety, including noise control and maintaining the peace in the surrounding area.

ALTERNATIVE

Approve selected recommendations.

Approve none of the recommendations.

Respectfully submitted,

David Bejarano
Chief of Police
Police Department

Approved: Michael T. Uberuaga
City Manager

BEJARANO/LD

Attachment:

1. City Manager's Report No. 00-53
2. City Manager's Report No. 00-197
3. Draft and Strikeout Ordinance, 0-2001-7, Division 15 – Entertainment Establishments, on file at the City Clerk's office.
4. Draft and Strikeout Ordinance, 0-2001-9, Division 7- Promoters, on file at the City Clerk's office.

5. Draft and Strikeout Ordinance, 2001-4, Division 8 - After Hours, on file at the City Clerk's office.
6. Vice and Licensing Task Force Report, June 1996
7. Proposed Fee Structure
8. Existing Fee Structure